

No. 13-1739 BN

This Commission convened a hearing on the complaint on March 13, 2014. Patricia D. Perkins represented the Board. Wilkins did not personally appear and was not represented by counsel.

The matter became ready for our decision on April 29, 2014, the last date for filing a written argument.

### **Findings of Fact**

1. Wilkins was licensed by the Board as an LPN at all times relevant to these findings.
2. On March 23, 2010, while on duty as an LPN, Wilkins diverted hydromorphone from a patient under her care.
3. Wilkins did not have a prescription for the hydromorphone she diverted.
4. On November 24, 2010, Wilkins was placed on the Department of Health and Senior Services' ("DHSS") Employee Disqualification List ("EDL") for a period of four years. This was a final disposition of DHSS.
5. On October 8, 2010,<sup>1</sup> in the Circuit Court of St. Francois County, Wilkins pled guilty to the class C felony of stealing a controlled substance<sup>2</sup> for her diversion of hydromorphone.

### **Conclusions of Law**

We have jurisdiction to hear the case.<sup>3</sup> The Board has the burden of proving that Wilkins has committed an act for which the law allows discipline.<sup>4</sup> The Board alleges that there is cause for discipline under § 335.066, which provides:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 against any holder of any certificate of registration or authority, permit or license required by sections 335.011 to 335.096 ... for any one or any combination of the following causes:

---

<sup>1</sup> The Board alleges in its complaint, and again in its written argument, that this guilty plea occurred on June 6, 2011. However, according to the Circuit Court's docket sheet, submitted by the Board as Exhibit 8, this guilty plea occurred on October 8, 2010.

<sup>2</sup> Section 570.030. Statutory references are to RSMo Supp. 2009 unless otherwise noted.

<sup>3</sup>Section 621.045.

<sup>4</sup>*Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 711 (Mo. App., E.D. 1989).

(1) Use or unlawful possession of any controlled substance, as defined in chapter 195...;

(2) The person has ... entered a plea of guilty ... in a criminal prosecution pursuant to the laws of any state ... for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated pursuant to sections 335.011 to 335.096, for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed;

\* \* \*

(14) Violation of the drug laws or rules and regulations of this state...;

(15) Placement on an employee disqualification list ... pertaining to employment within a health-related profession issued by any state or federal government or agency following final disposition by such state or federal government or agency[.]

#### Controlled Substances – Subdivisions (1) and (14)

Wilkins diverted hydromorphone from a patient under her care. Hydromorphone is a Schedule II controlled substance.<sup>5</sup> Wilkins did not possess a prescription for hydromorphone. Section 195.202 provides:

1. Except as authorized by sections 195.005 to 195.425, it is unlawful for any person to possess or have under his control a controlled substance.

Wilkins unlawfully possessed the hydromorphone in violation of § 195.202. Such unlawful possession is cause to discipline her license under to § 335.066.2(1) and (14).

#### Guilty Plea – Subdivision (2)

In its complaint, the Board limits its allegations under this subdivision to reasonable relation, fraud, dishonesty, and moral turpitude. Therefore, we limit our analysis under this subdivision to these issues.

---

<sup>5</sup> Section 195.017.4(1)(a)k.

Wilkins pled guilty to the following crime:

**570.030. Stealing – penalties.**

1. A person commits the crime of stealing if he or she appropriates property or services of another with the purpose to deprive him or her thereof, either without his or her consent or by means of deceit or coercion.

\* \* \*

3. Notwithstanding any other provision of law, any offense in which the value of property or services is an element is a class C felony if:

\* \* \*

(3) The property appropriated consists of:

\* \* \*

(m) Any controlled substance as defined by section 195.010[.]

Reasonable relation is a low threshold. To relate is to have a logical connection.<sup>6</sup>

Wilkins' guilty plea was a result of the theft of controlled substances from a patient under her care. Because Wilkins stole a controlled substance from a patient under her care, her crime was reasonably related to her qualifications, functions, and duties as an LPN.

An essential element is one that must be proved for a conviction in every case.<sup>7</sup> Fraud is an intentional perversion of truth to induce another, in reliance on it, to part with some valuable thing belonging to him.<sup>8</sup> It necessarily includes dishonesty, which is a lack of integrity or a disposition to defraud or deceive.<sup>9</sup> Stealing can be committed by either means of deceit or coercion. If deceit, which is an intentional perversion of the truth, was the only essential element, then stealing would be a crime containing the essential element of fraud. However,

---

<sup>6</sup> MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 1050 (11<sup>th</sup> ed. 2004).

<sup>7</sup> *State ex rel. Atkins v. Missouri Bd. of Accountancy*, 351 S.W.2d 483, 485 (Mo. App., K.C.D. 1961).

<sup>8</sup> *State ex rel. Williams v. Purl*, 128 S.W. 196, 201 (Mo. 1910).

<sup>9</sup> MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 359 (11<sup>th</sup> ed. 2004).

because coercion is not an intentional perversion of the truth, and stealing can be committed by coercion, we do not find that stealing is a crime that contains fraud as an essential element. Likewise, without an essential element of fraud, stealing does not contain the essential element of a disposition to defraud the true owner of property. Therefore, dishonesty is not an essential element of stealing.

Moral turpitude is:

an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellowman or to society in general, contrary to the accepted and customary rule of right and duty between man and man; everything “done contrary to justice, honesty, modesty, and good morals.”<sup>[10]</sup>

In *Brehe v. Missouri Dep’t of Elementary and Secondary Education*,<sup>11</sup> a case that involved discipline of a teacher’s certificate under § 168.071 for committing a crime involving moral turpitude, the court referred to three classifications of crimes:<sup>12</sup>

- (1) crimes that necessarily involve moral turpitude, such as frauds (Category 1 crimes);
- (2) crimes “so obviously petty that conviction carries no suggestion of moral turpitude,” such as illegal parking (Category 2 crimes); and
- (3) crimes that “may be saturated with moral turpitude,” yet do not involve it necessarily, such as willful failure to pay income tax or refusal to answer questions before a congressional committee (Category 3 crimes).

The court stated that Category 3 crimes require consideration of “the related factual circumstances” of the offense to determine whether moral turpitude is involved.<sup>13</sup> We determine that the crime of stealing is a Category 1 crimes that necessarily involve moral turpitude.

---

<sup>10</sup> *In re Frick*, 694 S.W.2d 473, 479 (Mo. banc 1985) (quoting *In re Wallace*, 19 S.W.2d 625 (Mo. banc 1929)).

<sup>11</sup> 213 S.W.3d 720 (Mo. App., W.D. 2007).

<sup>12</sup> *Id.* at 725 (quoting *Twentieth Century-Fox Film Corp. v. Lardner*, 216 F.2d 844, 852 (9<sup>th</sup> Cir. 1954)).

<sup>13</sup> *Brehe*, 213 S.W.3d at 725.

Wilkins is subject to discipline under § 335.066.2(2) for pleading guilty to a crime reasonably related to the qualifications, functions, and duties of an LPN and a crime involving moral turpitude.

Employee Disqualification List – Subdivision (15)

DHSS is a state government agency created by § 192.002, and Wilkins' placement on the EDL was a final disposition. Therefore, placement on DHSS's EDL is cause for discipline under § 335.066.2(15).

**Summary**

Wilkins is subject to discipline under § 335.066.2(1), (2), (14), and (15).

SO ORDERED on June 11, 2014.

/s/ Sreenivasa Rao Dandamudi  
SREENIVASA RAO DANDAMUDI  
Commissioner